

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2006 MAY 11 PM 2 49

RECEIVED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAY 12 2006

DEPARTMENT OF
WATER RESOURCES

In Re SRBA) Subcase 35-2924
Case No. 39576) (Rhodehouse)
)
) SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

Kevin Rhodehouse,, 4132 East, 100 North, Rigby, Idaho, 83442, filed a *Motion to File Late Notice of Claim* in subcase 35-2924 on August 29, 2005, claiming 1.11 cfs from groundwater for year-'round stockwater and industrial uses in Jefferson County with a priority date of July 21, 1965, based on a license.¹ In his *Motion*, Mr. Rhodehouse stated: "I recently acquired the property."

SRBA Presiding Judge John M. Melanson heard the *Motion* on August 29, 2005, and no one opposed it. Judge Melanson then entered his *Order of Reference to Special Master Terrence A. Dolan* on November 17, 2005, noting that "Basin 35 was reported in 1998 . . . and it is unclear to this Court whether anyone would be prejudiced by this late claim, although it does appear to be based on a license."² The Judge then referred the matter to the Special Master

to determine whether prejudice to any other claimant in Basin 35 would result from the granting of this late claim under I.R.C.P. 55(c) "good cause" standard. The claimant has already met the standards for untimeliness and meritorious defense under I.R.C.P. 55(c) "good cause" standard.

¹ The license (G-32454), dated March 21, 1968, was issued to Clement-Jackson, Inc., for an "industrial-processing plant" (slaughterhouse). The land was acquired by Henry and Ardith Fernandez in 1992, and sold to Mr. Rhodehouse on October 29, 2004.

² The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other Uses, Reporting Area 5, Part 1 (IDWR Basin 35)*, including Jefferson County, on June 19, 1998. The Director filed his *Corrected Director's Report for Irrigation & Other Uses, Reporting Area 5, Part 1 (IDWR Basin 35)* on July 10, 1998.

A hearing on the *Motion* was held on May 11, 2006, at the SRBA Courthouse in Twin Falls, Idaho. James A. Pendlebury appeared for Mr. Rhodehouse and Candice McHugh appeared by telephone for IDWR. Counsel for the claimant offered an *Affidavit in Support of Motion to File Late Claim*, dated May 9, 2006, in which Mr. Rhodehouse said that just before he purchased the property in 2004, he “became aware that the water rights to this property had not been resolved” and began the process of filing a late notice of claim. He then wrote:

I am requesting that the SRBA grant me the water right associated with this subcase as the water right previously existed, and I would be harmed if the court were not to grant this. This harm would include loss of the use of this property for my business purposes and also a substantial loss should I later try to resale this property.

During the hearing, counsel for Mr. Rhodehouse said that a slaughterhouse factory exists on the farm property and the water licensed for an “industrial-processing plant” has been used around the farm for various uses since then. Counsel also said that his client does some mining as a construction company and uses the water as part of that operation.

Counsel for IDWR said that the animal processing plant has been out of business since 1992, and aerial photography showed no cattle around the buildings. IDWR field staff have observed activity in the area, but no field inspection has been done to see whether or how water has been used inside the buildings. She thought use of water to maintain equipment might qualify as an industrial use since the definition is necessarily broad.

Conclusions of Law

The single issue for the Special Master to determine is “whether prejudice to any other claimant in Basin 35 would result from the granting of this late claim.” There is no evidence that it would. The claim is for 1.11 cfs from a well on the claimant’s property. Counsel for the claimant thought there may actually be two wells – one inside the factory building and one outside. In either case, there is likely no way to measure the amount of water drawn from the well(s) or when the water was withdrawn.

As noted, earlier, the late claim is for year-'round industrial and stockwater uses. Whether Mr. Rhodehouse can support a claim for stockwater use will likely depend on the specific use of the water since 1992, when the slaughterhouse business closed and no animals were seen around the buildings. Be that as it may, there is at least some evidence that water was and continues to be used on the farm consistent with the industrial use specified in the license.

The fact that the claim is based on a license may be the most compelling reason to allow the claim to proceed. The license put the world on notice that the original licensee, a corporation, had the right to 1.11 cfs for an industrial use and there is evidence that some form of industrial use has and continues to be made of the water.

The Presiding Judge has recently held that doubtful cases should be tried on their merits, at least in cases of late objections.³ That line of reasoning seems all the more compelling in cases where a late claim is made based on a license.

Recommendation

THEREFORE, IT IS RECOMMENDED that Mr. Rhodehouse's *Motion to File Late Notice of Claim* in subcase 35-2924 be **granted**.

DATED May 11, 2006.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

³ See, e.g., *Memorandum Decision and Order on Challenge, Order of Recommitment*, subcases 47-16433, *et al.*, March 22, 2005, and *Order on Permissive Review and Order of Recommitment*, subcases 45-12475, *et al.*, August 3, 2005.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on May 11, 2006, with sufficient first-class postage to the following:

KEVIN RHODEHOUSE

Represented by:

JAMES A PENDLEBURY

482 CONSTITUTION WAY

SUITE 316

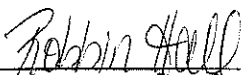
IDAHO FALLS, ID 83401

Phone: 208-528-7666

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098


Deputy Clerk